

# Build Over Easement Procedure

2020 Version 3.0

## **Background & Purpose**

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Easements on private property can accommodate Council stormwater drains which service surrounding properties. Easements may also contain services not managed by Council such as gas, sewer and water. A Council easement may not contain a stormwater drain but may be required for later use or as an overland flow path.

Easements are registered on a property's Certificate of Title and provides a right of access to the relevant authority. Proposed private works over or adjacent to an easement must be approved by each authority with an interest in the easement.

The objective of this procedure is to provide clear guidelines where works involve building over or adjacent to a Council easement and is intended for use by Council officers, utilities, private developers and/or residents.

This procedure provides clear and consistent instructions on maintaining the best interests of Council and statutory authorities when a property owner requests to build over or adjacent to an easement (BOE). Best interests may include protecting a Council stormwater drain or other asset within an easement, maintaining future access or use of an easement, and/or maintaining an unobstructed overland flow path.

## **Scope**

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This procedure covers the installation of any item that: imposes a load over or adjacent to an easement; limits access to or over an easement; or, limits the future use of an easement.

## **Definitions**

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Angle of Repose: Angle of repose is the angle of the slope that indicates how a structure will be loaded below ground. All structures constructed within the angle of repose of the existing drain will be forcing pressure on the underground assets. This angle is related to the density, surface area, and coefficient of friction of the surrounding soil. However the angle of repose is usually considered to be a 45° angle.

Asset: Any infrastructure installed within or on an easement that is owned and managed by a service authority.

Building, Structure or Works: Any proposed works on or within an easement that directly impacts the ability of Service Authorities to use the easement.

Building Over Easement: The formal process required to obtain a Report and Consent of the service authority in accordance with Section 130 of the *Building Regulations 2018*.

Certificate of Title: Certificate of Title is a person's record of interests and rights affecting their land. It is issued by the Registrar of Titles to the person entitled to its possession, usually the registered proprietor, mortgagee or chargee.

The Certificate of Title shows the date the certificate was created, plus all registrations and recordings made in the Register at the time. This includes the name(s) of registered proprietor(s), easements and other interests such as mortgages, covenants and caveats.

Council: This includes the City of Hobsons Bay or its predecessors the former City of Williamstown, former City of Altona and former City of Werribee. In some instances the Certificate of Title may reference a drainage easement for lots on a plan of subdivision. Where this occurs the City of Hobsons Bay has drainage rights to the easement.

Council Drain: An underground drainage pipe constructed or to be constructed by Council within an easement to provide for stormwater drainage or an overland flow path to allow for the flow of stormwater not within the underground drainage system.

Easement: a section of land that may be registered / as shown on the Certificate of Title that provides Council or a statutory authority the right to enter a property for the purpose of maintaining, repairing, upgrading or installing services within the easement or to allow for overland flow.

Formal Agreement: A legal binding agreement signed by both and authorised officer of the City of Hobsons Bay and all landowners shown on the Certificate of Title.

Implied Easement: An area of land containing an existing asset but has not been marked as an easement on the Certificate of Title. Any works over the implied easement will require Build Over Easement Approval

Major Building Over Easement: A Report and Consent issued by the City Of Hobsons Bay allowing the landowner to undertake substantial works within an easement (where a Council asset exists), which requires a formal Section 173 Agreement being signed by Council and the landowner and being registered on the Certificate of Title.

Minor Building Over Easement: A Report and Consent issued by the City of Hobsons Bay allowing the landowner to undertake minor works with an easement, which may at the discretion of Council require a formal agreement being signed by Council and the landowner.

Overland Flow: This is stormwater that does not enter the underground stormwater system but flows overland through properties and road reserves.

Overland flow path: Is the above-ground component of a drainage system that caters for overland flows that occur when underground drainage pipes reach their capacity and cannot cope with more run-off from heavy rainfall.

Offset: The offset is the distance from the outside of an asset within the easement to the nearest building, structure or works.

Private drain: a drain designed to directly service a private property. A private drain is the responsibility of the property owner and may be located within a private property, easement or Council reserve so as to be able to connect to the Council stormwater system.

Rights: The rights whether formal or informal of service authorities to install, replace, upgrade, protect and maintain their assets from time to time.

Report and Consent: This is the formal process under regulation 130 *Building Regulations 2018* to allow for a building, structure or works to be built over an easement.

Section 173 agreement: an agreement entered into by Council and a property owner under Section 173 of the *Planning and Environment Act 1987* (Vic) that is recorded on the Certificate of Title. The conditions of the agreement are to be maintained on the Title regardless of change in property ownership.

Services: Services may include, but not limited to, stormwater drainage, sewers, water supply, electricity supply, gas supply, electricity supply and telecommunications.

Service Authority: a public or privately operated entity which provides water, sewerage, drainage, gas, electricity, telecommunication or other infrastructure like services under the authority of an act of the Victorian or the Commonwealth governments.

Stormwater drain: an underground drainage system that carries stormwater from upstream to downstream.

Stormwater Pit: A stormwater pit is a chamber with or without a removable cover that allows access to the underground drainage assets.

# Objectives

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The objectives of this procedure are as follows:

- To provide a consistent and equitable approach to assessing applications from landowners to construct a building, structure or works over an easement set aside for Council purposes.
- To allow construction over an easement where a viable alternative location for the proposed building, structure or works is not available on the site.
- To ensure that approval to Building Over Easement has been obtained from all service authorities and parties that have rights over the easement prior to processing.
- To provide and protect Council's ability to access, maintain, construct and improve assets within an easement if and when required.
- To ensure that the building, structure or works will not jeopardise an existing Council drain in the easement or an abutting property easement.
- To ensure that Council does not incur any cost associated with a building, structure or works over an easement.
- To ensure that the building, structure or works does not affect the capacity of overland flows likely to occur along or over the easement.
- To provide guidance to new land owners about specific conditions in regards to Council's rights to access easements.
- To ensure Council's interests will be protected by way of formal agreements binding current and future landowners.
- To ensure the building, structure or works conforms to the Building Code of Australia, where applicable.

# Responsibilities

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Responsibilities for each stakeholder involved in the implementation of this procedure are as follows:

## Property Owner

Submit application for consent should they seek to conduct works on an easement and provide required supporting document for the application to be adequately assessed

## Building Control Unit

Administer Build Over Easement (BOE) requests and approve or refuse them following receipt of conditions from Engineering Services

## Engineering Services Unit

Assess BOE referral requested from Building Services Control Unit and provide conditions if endorsing consent through a response back to Building Control Unit

## **Delegation to give consent**

In accordance with the Building Regulations 2018 delegation to implement the following:

r.130(1) function, in capacity as service authority, to give report and consent to an application for a building permit to construct a building over an easement vested in council is provided to:

- Director Sustainable Communities
- Manager Planning, Building and Health Services
- Manager Strategy, Economy and Sustainability
- Municipal Building Surveyor

## **Procedure Detail**

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### **Building Over Easement (BOE)**

Council encourages residents to keep easements within their property clear in order to allow for any potential works. If a property owner insists on building over the easement, permission from the relevant service authorities is required. In the case of stormwater drainage easements, Council is the relevant authority.

### **Implementation of these Guidelines**

The following will be considered when assessing applications for Use of Easement under these Guidelines:

- All easements will be subject to the provisions of these Guidelines, irrespective of whether Council assets exist in the easement or not.
- If there is no potential for Council to use the easement, permission may be granted for the expungement of the easement through formal processes.
- The cost of applications to Building Over Easements will be covered by the applicant including, where necessary, the cost of registrations fees associated with the lodgement of section 173 agreements.
- Specific requirements for the building, structure or works in relation to the application to ensure assets or future assets are protected from external forces.

### **Works permitted without requiring approval**

The following do not require Building Over Easement approval:

- Timber fencing on property boundaries that does not penetrate the stormwater drain or restrict an overland flow path;
- Paving less than 10m<sup>2</sup> constructed on a sand base;
- Crushed rock pathways;
- Stepping stones; and
- Clothes lines.

## **Works permitted through approval**

Council classifies approval into two categories: 'Minor Building Over Easement Approval' and 'Major Building Over Easement Approval'. For the consideration of minor and/or major Building Over Easement Approval (as defined below) the owner may be required to enter into a Section 173 agreement with the Council that contains appropriate terms and conditions that ensures the ongoing protection of Council's interests and assets in an easement. Where a Section 173 agreement is required the owner is to bear all costs for drafting the agreement and for registering the agreement on title.

### **Minor Building Over Easement Approval Under Building Regulations**

The following will require a Minor Building Over Easement Approval when constructed over an easement with no Council drain:

- Standalone outbuildings of lightweight materials and steel frame with a floor area greater than 10 square metres such as a steel shed.
- Brick fence perpendicular to easement provided no load is transferred to Council's stormwater drain.
- A simple open carport i.e. with a flat steel roof, flat frame and steel or timber posts.
- Simple timber decking structure on timber stumps.
- Eaves where there is a minimum height from ground level of 2.2m.
- Pool surrounds provided it is not part of the pool structure.
- Service pipes including residential drains.
- Hot water systems.
- Service meters.
- Water tanks on a structural platform.
- Garages / Carports where no drain exists (see Major also).
- Pergolas, Verandas and Gazebos (see Major also).
- Decking (see Major also).
- All eaves > 450mm wide.

### **Major Building Over Easement Approval Under Building Regulations**

The following will require a Major Building Over Easement Approval when constructed over an easement with a Council drain or where a Council drain is likely to be constructed in the future:

- Standalone outbuildings of lightweight materials and steel frame such as a steel shed.
- Major timber structures that don't fall within the minor category.
- Garages / Carports.
- Sheds with a floor area greater than 10m<sup>2</sup>.
- Commercial buildings (subject to assessment).
- Workshops.
- Studios.
- Pergolas, Verandas & Gazebos.
- Decking.
- Shade Sails.

## Works Not Subject to Building Regulations But Still Requiring Building Over Easement Approval

The following will require a Works Not Subject to Building Regulations But Still Requiring Building Over Easement Approval when constructed over a drainage easement:

- Any works over a drainage line which is deemed to be an implied easement
- Simple masts, poles, aerials, antennas.
- Fences.
- Retaining walls.
- Sheds with a floor area less than 10m<sup>2</sup>.
- Driveways.
- Paving greater than 10m<sup>2</sup> constructed on a sand base.
- Cut/Fill depending on extent (see Major also).
- Landscaping.
- Cut/Fill depending on extent.
- Car Parks.

## Non-Permissible Structures

Council will **not permit the following** in any easement whatsoever:

- Any part of habitable dwelling.
- Any structure under the same roofline as the habitable dwelling.
- In-ground or above-ground swimming pools/Spas.
- Structures containing sewerage fixtures within the easement.
- Industrial buildings.
- Any structure over or within 1m of a stormwater access pit.
- Strip footings, only pad footings are allowed.
- Brick garages, workshops or outbuildings.
- Service meters over any drain.

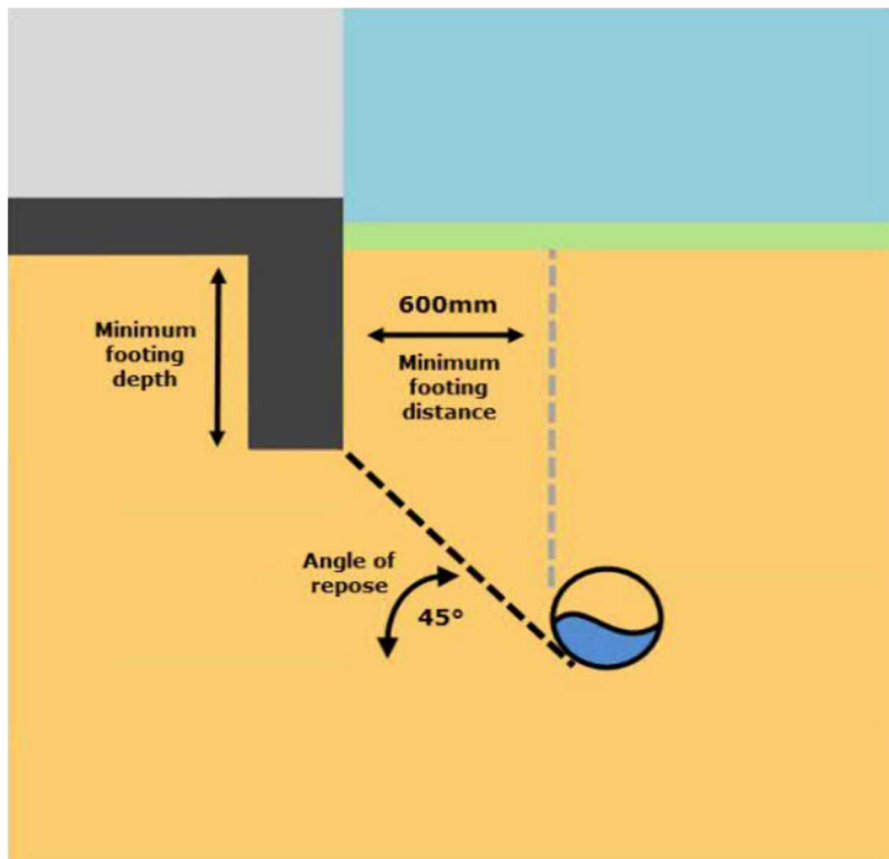
## **Minimum requirements to be met in application**

Approval for any structures is only issued as long as certain requirements can be met, including but not limited to:

- Footings must be offset at least 600mm from the drain.
- Stormwater drains must remain covered by at least 600mm of soil.
- Structures must not transfer their load to the stormwater drain, which is shown by using the angle of repose (see diagram below).
- If the easement is designed to allow for overland flow, the flow must not be obstructed.
- If footings are required near a Council stormwater drain and the exact location of the drain is not confirmed, the property owner must uncover the drain at their cost.
- The structure can be moved or easily disassembled.
- The structure is not placed over a pit or the Legal Point of Discharge.

The following diagram shows how to assess minimum footing depth which satisfies angle of repose requirements:





### Specific Conditions

In approving an application for a Building Over Easement a number of specific conditions may be applied to the approval to protect the rights of Council and its assets. These conditions may be applied to any application. The most common conditions, but not limited to are provided below:

- Replacement or upgrade of Council assets including drains;
- Materials to be used;
- Weight of building, structure or works;
- Construction type;
- Construction joints;
- Offsets;
- Angle of repose;
- Depth, location and type of footings;
- CCTV of drain within easement;

## Related Legislation

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This procedure has been developed with consideration to the following legislation:

- ✓ *Building Act 1993 (Vic)*
- ✓ *Building Regulations 2018 (Vic)*
- ✓ *Local Government Act 1989 (Vic)*
- ✓ *Planning and Environment Act 1987 (Vic)*
- ✓ *Road Management Act 2004 (Vic)*
- ✓ *Subdivisions Act 1988 (Vic)*
- ✓ *Water Act 1989 (Vic)*

## Further Information

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For further information concerning this Policy please contact the Capital Works Department.

## Document Control

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Procedure Name	Build Over Easement Procedure
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## Version History

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V3.0	23 July 2020	Manager Capital Works